

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2021/22802

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) AMENDED ON 22 AUGUST 2023,
ORIGINAL CIRCULATED ON 21 AUGUST
2023

SIGNATURE DATE

In the application by

H, S A

Applicant

and

H, B W

First Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Contempt of Court application – not urgent – removed from the roll and stayed pending outcome of Rule 43(6) application by respondent

Order

[1] In this matter I make the following order:

1. *The applicant's application is removed from the roll;*
2. *The applicant is ordered to pay the wasted costs occasioned by the removal of the application;*
3. *The applicant's application is stayed pending the outcome of the respondent's Rule 43(6) application provided that the respondent applies for a hearing date of his application before or on 2 October 2023;*
4. *No cost order is made in respect of the counter- application.*

[2] The reasons for the order follow below.

Introduction

[3] The applicant obtained an order in terms of Rule 43 of the uniform Rules of Court on 9 May 2023. On 14 July 2023 she brought an application to declare the respondent to be in contempt of court for non-compliance with the Rule 43 order. The amount in arrears was R5 430.32 at the time. The amount was paid and on 17 July 2023 the applicant's attorneys informed the respondent's attorneys that the matter would be removed from the roll, costs reserved. On the same day the respondent's attorneys informed the applicant's attorneys that the respondent intended to bring an application for a variation of the Rule 43 order in terms of Rule 43(6).

[4] The respondent brought the Rule 43(6) application on 3 August 2023. When the contempt of court application was set down on the 4th of August 2023 it was done with knowledge of the respondents Rule 43(6) application brought in the normal course on the 3rd.

[5] The contempt application was again placed on the urgent roll for 14 August 2023 supported by a supplementary affidavit by the applicant dated 4 August 2023. I could not locate any service affidavits or returns of service on Caselines and it is not apparent to me when exactly service was effected but it must have been on or just after the 4th. The supplementary affidavit seems to be an affidavit in response to the Rule 43(6) application and it is not clear to me from the affidavit what the exact amount of unpaid maintenance was on 4 August 2023. It is stated in paragraph 19 that an amount of R12 634.22 was paid in respect of July 2023 and the inference is that there was a short payment of R15 069.72.

[6] In both the original application and the second application the applicant dealt with the question of urgency quite cursorily. It is stated that contempt proceedings are by their very nature urgent and that the respondent was likely to continue to avoid his maintenance obligations unless an order as sought in the notice of motion was granted. Contempt of court and a failure to meet maintenance obligations would often merit an appropriate order in the urgent court, but the decision to do so cannot be divorced from the facts of the case. In my view no case is made out on the facts of the matter for a hearing on the 14th when papers were served on the 4th.

[7] On 9 August 2023 the respondent brought a counter-application to the applicant's contempt of court application seeking an order that the contempt of court application be struck from the roll and stayed pending the outcome of the Rule 43(6) application, and that the applicant be prohibited from instituting any further contempt proceedings whether by way of summons or application.

[8] It was argued on behalf of the applicant that the applicant's contempt of court application be postponed *sine die* and to be heard together with the respondent's application in terms of Rule 43(6), and that the cost of both applications be reserved.

[9] In the event that the respondent's Rule 43(6) application is successful and he is granted the retrospective relief that he seeks it may be that the contempt application

becomes moot. I express no views in this regard. It would make sense however to stay the contempt of court application pending the outcome of the rule 43(6) application provided that the respondent pursues the Rule 43(6) application diligently.

[10] The Rule 43(6) application was served on 3 August 2023 and affidavits should be exchanged by mid-September 2023. Application can then be made before or on 2 October 2023 for a date on the roll.

[11] For the reasons set out above I make the order in paragraph 1.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **22 AUGUST 2023**.

COUNSEL FOR THE APPLICANT:	L HOLLANDER
INSTRUCTED BY:	ASSHETON-SMITH GINSBERG
COUNSEL FOR THE RESPONDENT:	R ADAMS
INSTRUCTED BY:	PAGEL SCHULENBERG ATTORNEYS
DATE OF ARGUMENT:	18 AUGUST 2023
DATE OF JUDGMENT:	21 AUGUST 2023